Regional Manager. Commissary shall be opened for regular shopping no oftener than three times a week.

b. Sales Price – The sales prive of all commissary goods will be set and maintained by the Chief, Commissary, Mess and Domestic Services Section, and will correspond substantially with the prevailing retail prices in Honolulu.

c. Collection Procedure – Payment for commissary purchases will, at the discretion of the Island Manager, be in cash at the time of purchase or on a cumulative monthly basis. * * *

6. FAA Dining Room

a. Use – All Federal employees not occupying family quarters are entitled to eat in the FAA Dining Room. At the discretion of the Island Manager, this privilege may be extended to their guests; to FAA employees occupying family quarters, their dependents and guests; to similar-type employees of other Federal Agencies, their dependents and guests; and to official visitors. Further extension of this privilege must be approved by the Regional Manager.

b. Collection Procedure – The revised per diem structure eliminates the collection for meals served to Sixth Region FAA employees in per diem status. Collections for meals served to FAA employees in bachelor status but not on per diem (includes permanently stationed FAA bachelor employees and most FAA construction workers) will be made by means of payroll deductions * * *. Collections from all other dining room patrons will be on a cash basis except that meals served to employees of other agencies and contractors with whom there exist subsistence agreements will be collected through the normal billing process. * * *

c. Missed Meals – Any FAA employee who is subject to payroll deductions for meals may make application for adjustment for any period in excess of five consecutive days during which he is absent from meals. * * *

FAA Pacific Region Notice PC 4239.1 CH3, dated February 1, 1963, provides in part: "All bachlor-status employees must take their meals at the central dining room."

The FAA furnishes complete meal service at its mess hall to its unaccompanied employees. The cost of the three meals per day to the unaccompanied employees during the years at issue was $1.50 until June 9, 1963, and $1.75 thereafter. This charge was deducted from the pay of unaccompanied employees whether they ate at the mess hall or not, except that an adjustment could be made if more than five consecutive days were missed. Accompanied FAA employees and their dependents could dine at the FAA mess hall at the discretion of the Island Manager, but could not do so on a permanent basis. Food for the mess hall was ordered on the basis of the number of unaccompanied employees to be served, and accompanied personnel could be served only if sufficient supplies were available. On the average of four times a year for periods of one to four weeks, food supplies reached such a low level that mess hall privileges to accompanied personnel had to be suspended. The mess hall prices charged to accompanied employees and their dependents during the years at issue were $1.00 for breakfast, $1.25 for lunch, and $2.00 for dinner.

The only source of food for home consumption that could be purchased on Wake Island was the FAA commissary. It was the equivalent of a small supermarket, offering quality items generally without a choice of brands. Prices at the commissary were fixed so as to equal the average of the prices prevailing at three representative markets in Honolulu plus 3-½ percent in lieu of sales tax (equivalent to the Hawaii sales tax). The commissary was open four hours a day every other day. Payment for items purchased at the commissary was made in cash, either at the time of purchase or on a monthly basis. All residents of Wake Island, whether or not FAA employees, were generally allowed to shop at the FAA commissary, but, as occasionally happened, when supplies became low, shopping privileges were restricted to FAA personnel. FAA studies showed that it was cheaper for it to maintain the commissary than to feed accompanied employees and dependents in the mess hall. Cost studies by private concessionaires showed that it would be "better" to continue to

run the commissary as an FAA facility.

FAA employees could dine at the Pan American and Facilities Management Corporation mess halls by invitation only. Al Ching's bowling alley restaurant could accommodate between 35 and 50 persons at one time; the record does not disclose the rate of turnover of patrons or the total number that could be served in a day. Since the restaurant was popular, reservations were necessary to ensure accommodations, and its food supplies at times ran low so that some items on the menu were not always available. If the FAA had closed the commissary and had not permitted accompanied employees to eat at its mess hall, there would not have been adequate facilities on the island to accommodate the accompanied employees and their dependents on a regular, full-time basis. No edible food could be grown on the island.

There was no requirement that accompanied employees purchase theri food from the commissary. On a few occasions, petitioner and others on the island joined together to have meat supplies from Hawaii shipped to them at Wake Island. Because of a Federal law regarding meat inspection, the group was unable to continue this plan, and later had meat shipped from California. This method of obtaining meat was used twice by petitioner during the years at issue, but it was felt that the trouble and expense involved more than offset the benefits derived from the plan. On a number of occasions various employees combined to form their own "co-op", ordering food supplies from Honolulu and the mainland in case lots.

Section 591.203 of the Federal Personnel Manual Supplement provides that a "differential" of 25 percent of basic compensation shall be paid on Wake Island. The same section provides that differentials are based on

(a) extraordinarily difficult living conditions,
(b) excessive physical hardship, or
(c) notably unhealthful conditions * * *

Petitioners and their children ate most of their meals at home during the years at issue. The meals were prepared by Mrs. Tougher

from food purchased at the FAA commissary. Petitioners ate at the FAA mess three or four times during the years at issue, and on occasion they ate dinner at Al Ching's to break the monotony. Petitioners spent $1,611.34 in 1963 and $1,534.26 in 1964 for items purchased at the FAA commissary. These amounts included food used for the meals of petitioners and their children. Non-food items accounted for about five percent of these figures and included household maintenance items such as soap, ammonia, mops, brooms, and household cleaners, but not items such as toiletries.

On their 1963 joint income tax return, petitioners reported $9,822.43 as wages or salary. An attached schedule stated in part:

Gross Wages reported on W-2 form		$12,507.64
Lodging	$1,073.87	
Food	1,611.34	
Total	$2,685.21	
		2,685.21
Taxable Income		$ 9,822.43

On their 1964 joint income tax return, petitioners reported $14,071.59 as wages or salary. They subtracted $2,674.47 as "Adjustments" in arriving at "Total income" (adjusted gross income). An attached schedule, similar to that included in their 1963 return, disclosed that the amount of "Adjustments" consisted of $1,140.21 attributable to "loding" and $1,534.26 attributabe to "Food".

In his notice of deficiency, the Commissioner considered as "unallowable deductions" sums for "food purchases" in the amounts of $1,611.34 for 1963 and $1,534.26 for 1964.

OPINION

RAUM, Judge: Petitioners seek the benefit of section 119 of the 1954 Code[2] in respect of supplies (primarily groceries) purchased by Mrs. Tougher at the FAA commissary for family use. It should be noted at the outset, first, that personal, living and family expenses are generally not deductible from gross income, section 262, and, second, that section 119 deals with exclusions from gross income, not deductions therefrom. In our view, section 119 does not authorize petitioners to subtract from Mr. Tougher's reportable wages the expenditures which Mrs. Tougher made at the commissary for family supplies.

It is important to bear in mind the history of the statutory provisions involved. Prior to 1954 there was no statute whatever specificcaly dealing with the problem, However, a line of cases and rulings had developed in which the value of lodging or meals furnished by an employer to his employee in one set of circumstances or another was held not to represent income to the employee under the general provisions of the law defining gross

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2. SEC. 119. MEALS OR LODGING FURNISHED FOR THE CONVENIENCE OF THE EMPLOYER.

There shall be exluded from gross income of an employee the value of any meals or lodging furnished to him by his employer for the convenience of the employer, but only if –

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

income.[3] Not only was the furnishing of such tax-free benefits susceptible of abuse, but there was such confusion as to the proper test to be applied to determine the tax-free status of meals and lodging that section 119 was inserted in the 1954 Code to set forth with specificity the restrictive conditions under which such unusual benefits would be available.[4] It is clear, not only from the language of section 119 but also from the legislative history, that section 119 was designed to deal with the problem whether the value of meals and lodging furnished to an employee in kind[5] was to be treated as additional compensation rather than with any question as to whether the employee might be entitled to a deduction from gross income on account of expenditures made by him for meals and lodging. Accordingly, it would seem that section 119 from its very nature does not apply here. There would appear to be no basis for an "exclusion" from gross income on the facts of this case; petitioners are really not seeking to prevent the Commissioner from adding the cost of the groceries in question to Mr. Tougher's wages; rather, they are in fact

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3.

In determining whether the value of such meals or lodging furnished in kind should be added to the employee's gross income, emphasis was sometimes placed upon whether they were furnished for the convenience of the employer, and at times upon whether they were intended as additional compensation to the employee. See, e.g., O.D. 265, 1 C.B. 71; T.D. 2992, 2 C.B. 76; O.D. 915, 4 C.B. 85; Jones v. United States, 60 Ct. Cls. 552; T.D. 4965, 1940-1 C.B. 15. See generally, Saunders v. Commissioner, 215 F. 2d 768, 772-775; Gutkin and Beck, Some Problems in "Convenience of the Employer," 36 Taxes 154.

4.

See H. Rept. No. 1337, 83d Cong., 2d Sess., p. 18, A38-A39; S. Rept. No. 1622, 83d Cong., 2d Sess., p. 190-191; Gordon S. Dole, 43 T.C. 697, 707-708 (concurring opinion), affirmed per curiam on that concurring opinion, 351 F. 2d 308 (C.A. 1).

5.

S. Rept. No. 1622, 83d Cong., 2d Sess., states (p. 190): "Section 119 applies only to meals or lodging furnished in kind." (Emphasis supplied.) See also H. Rept. No. 1337, 83d Cong., 2d Sess., p. A39.

seeking a deduction from those wages on account of their commissary expenditures – a matter that is not dealt with at all in section 119. However, because of the considerations outlined below in the footnote[6] we do not rest our decision on this ground, and hold that petitioners are not entitled to prevail for the simple and obvious reason that petitioner's employer did not furnish him with any "meals".

6.

In J. Melvin Boykin, 29 T.D. 813, an employee-physician was required to occupy quarters at his employer's hospital and to pay a fixed rental therefor which was deducted from his basic salary. This Court's holding that the employee's payment of such rental did not qualify for exclusion under section 119 was reversed in 260 F. 2d 249 (C.A. 8); the Commissioner acquiesced in the reversal, Rev. Rul. 59-307, 1959-2 C.B. 48, and subsequently promulgated new regulations reflecting such acquiescence, 1964-2 C.B. 42. In Boykin the mandatory withholding of a fixed amount for rent from the employee's formally designated salary could be regarded in substance as restating his true salary to be the diminished amount thereof, and the employer could be regarded as furnishing the employee the lodging in kind. As thus interpreted, the reversal in Boykin is not inconsistent with what is suggested above, and, indeed, the newly promulgated regulations appear to be based upon such rationalization. For, the new regulations provide that where "the employer furnishes the employee lodging for which the employee is charged an unvarying amount irrespective of whether he accepts the lodging," the amount of the charge is not treated as part of the employees compensation, and whether the value of the lodging furnished is excludable from the employee's gross income depends upon whether it satisfies the various other requirements of the statute. Regs. section 1.119-1(b). It was undoubtedly pursuant to these provisions that the Commissioner permitted petitioners to reduce Mr. Tougher's compensation by the amount that was required to be withheld from his wages on account of the rent for his house. The regulations contain similar provisions relating to meals. Regs. section 1.119-1 (a) (3) (ii). Cf. William I. Olkjer, 32 T.C. 464, where a fixed amount was deducted from the employee's salary for meals, lodging and other facilities. No such fixed amounts were deducted here from Mr. Tougher's salary for meals. Indeed, he was not even required to shop at the commissary or to purchase food at any fixed amount, and the purchases were paid for in cash (although on a monthly basis) as they would be at any other supermarket in the United States. Although possibly inconvenient and

(continued on page 13)

Thus, wholly apart from the difficulties arising from the problem whether the sale of meals for a charge constitutes "furnishing" such meals to an employee, we think it clear that the sale of groceries is not the equivalent of furnishing "meals". It is hornbook law that unless there is a compelling reason to the contrary the words of a statute must be given their ordinary and usual meaning. We think it puts too much strain on language to treat the word "meals" as meaning a sack of groceries and some other household supplies purchased at the commissary for family consumption or use at home.

The word "meals" connotes to us food that is prepared for consumption at such recognized occasions as breakfast, lunch, dinner, or supper, or the equivalen thereof. It does not ordinarily mean a bag of potatoes, a tin of coffee, a box of salt, a can of peas, ten pounds of flour, a package of rice, a bottle of ketchup, a jar of mayonnaise, or an uncooked chicken. To be sure, these items, or portions of some of them, can be processed and combined with other items so as to produce "meals", but in their raw form they are not ordinarily regarded as meals, and in the absence of persuasive evidence pointing in the other direction, it is our judgment that Congress did not use the term "meals" in that sense. In fact, the emphasis in section 119 on the "convenience of the employer" suggests added support for giving the term "meals" its ordinary meaning. When an employer furnishes

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not always feasible, he could, and at times in fact did, obtain food from other sources, at least to some extent.

However, because of the general confusion in this field, we do not rest our decision on this point, particularly since in our view the supplies purchased at the commissary do not qualify as "meals" under the statute in any event. We note also that the confusion in this area has been enhanced rather than cleared up by the cases dealing with the question whether cash allowances for meals paid to highway patrolmen are excludable under section 119. Cf. United States v. Morelan, 356 F. 5); Keeton v. United States, 256 F. Supp. 576 (D. Col.), affirmed per curiam 383 F. 2d 429 (C.A. 10); but cf. Wilson v. United States, _____ F. Supp. _____ (D.N.H.).

a "meal" in its normal sense, he can control the time, place, duration, value, and content of the meal to suit his convenience. These elements of potential control, which are strong evidence that the employer's convenience is involved, are lacking in a case such as this one, where the employee merely purchases groceries. Thus it is quite consistent with legislative intent not to extend the term "meals" to include groceries.

It is true that in Charles N. Anderson, 42 T.C. 410, reversed on other grounds, 371 F. 2d 59 (C.A. 6); milk and certain minor supplies taken from the employer's kitchen were treated as meals, but this Court made it abundantly clear that the Government did "not argue that the milk and groceries furnished were not meals within the meaning of section 119", 42 T.C. at p. 418. And the decision of this Court was based merely upon the assumption, without adjudication, that food supplies could constitute meals. We are now squarely faced with the question for the first time, and we hold that the groceries purchased by the taxpayers did not qualify as "meals" under the statute. Moreover, it is to be noted that the employer furnished food items in kind in Anderson, and to the extent that the employer merely reimbursed the employee for food purchased by the latter it was held that section 119 did not apply. It seems clear that Anderson is not authority for the petitioners' position herein.

We do not pause to consider various other knotty problems that are suggested by this case – e.g., whether meals furnished to the wife and children of the employee qualify as meals "furnished to him", cf. Armstrong v. Phinney, 394 F. 2d 661, 664 (C.A. 5). We hold merely that the supplies purchased at the commissary were not meals within the meaning of the statute.

Decision will be entered for the respondent.